

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOSE DIAZ PEREZ	§	
v.	§	CIVIL ACTION NO. 6:18cv255
DIRECTOR, TDCJ-CID	§	

ORDER OF DISMISSAL

Petitioner Jose Diaz Perez, an inmate confined in the Texas prison system proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 challenging his conviction for drunk driving. The petition was referred to United States Magistrate John D. Love, who issued a Report recommending that the petition for the writ of habeas corpus be denied. Petitioner has filed objections, arguing that the state habeas court's findings are not entitled to a presumption of correctness because the hearing was not held by the same judge who presided at trial, the allegedly false testimony by Detective John Rafferty was material, the trial court improperly held *ex parte* communications with the jurors, Petitioner received ineffective assistance of counsel, and the decision of the state appellate court was in error.

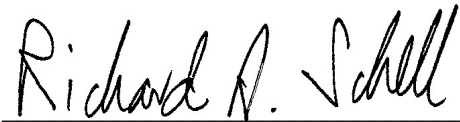
The Report of the Magistrate Judge, which contains proposed findings of facts and recommendations for the disposition of such action, has been presented for consideration, and having made a careful *de novo* review of Petitioner's objections, the court has determined that the findings and conclusions of the Magistrate Judge are correct and the Petitioner's objections are without merit. The court therefore adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the court. It is accordingly

ORDERED that the Report and Recommendation of the Magistrate Judge (docket no. 40) is **ADOPTED** as the opinion of the district court. It is further

ORDERED that the petition for the writ of habeas corpus is **DENIED** and the above-styled civil action is **DISMISSED** with prejudice. It is further

ORDERED that a certificate of appealability is **DENIED**. All motions not previously ruled on are **DENIED**.

SIGNED this the 5th day of August, 2020.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written with a large, prominent "R". The middle initial "A." is written in a smaller, more compact script. The last name "Schell" is written with a large, prominent "S" and a long, sweeping tail that extends to the right.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE